



Declaratory Ruling regarding the TCPA to be unreasonable or arbitrary and capricious (including aspects of the 2015 Declaratory Ruling that are relevant to this case), the D.C. Circuit did not interpose its own interpretations of the TCPA, but instead left it up to the FCC to issue a new Declaratory Ruling. Responding to the D.C. Circuit's ruling, the FCC issued a Public Notice seeking comment on the issues raised as a result of the *ACA International* decision regarding the interpretation of the Telephone Consumer Protection Act.<sup>2</sup>

“Courts are divided on the current definition of an ATDS [automatic telephone dialing system] in the wake of *ACA International*.”<sup>3</sup> Some courts have interpreted what constitutes an ATDS in light of the statutory language alone,<sup>4</sup> while

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<sup>2</sup> Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's *ACA Int'l* Decision, DA 18-493, May 14, 2018.

<sup>3</sup> *Sessions v. Barclays Bank Del.*, No. 1:17-CV-01600-LMM, 2018 WL 3134439, at \*3 (N.D. Ga. June 25, 2018).

<sup>4</sup> *See id.* at \*4–5 (relying on statutory language alone to determine whether a system qualifies as an ATDS).

others have held that the FCC's rulings prior to the 2015 Declaratory Ruling addressed in *ACA International* remain valid.<sup>5</sup>

Given that courts are divided on the current definition of an ATDS, that the FCC promptly began the process of formulating and issuing a new Declaratory Ruling addressing the issue, and that the deadlines for comments and reply comments to be filed with the FCC have already passed, Nationstar sees wisdom in continuing the present stay in this case to allow the FCC a reasonable amount of time to issue a new Declaratory Ruling in the wake of the *ACA International* decision. This request is consistent with other cases filed in this Court which are currently stayed in light of the recent FCC's Public Notice.<sup>6</sup> To that end, Nationstar submits with this Status Report a proposed order.

This 27 day of July, 2018.

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<sup>5</sup> See *Maddox v. CBE Group, Inc.*, NO. 1:17-CV-1909-SCJ, 2018 WL 2327037, at \*4 (N.D. Ga. May 22, 2018) (“Given the *ACA Int'l decision*, the Court relies on the FCC's 2003 interpretation of § 227(a)(1) to determine if Defendant's system qualifies as an ATDS.”).

<sup>6</sup> See *Rose v. Wells Fargo Advisors, LLC*, No. 1:16-CV-562-CAP, Doc. 37 (N.D. Ga. July 20, 2018).

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